

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AQUARIAN FOUNDATION,

Plaintiff,

v.

BRUCE KIMBERLY LOWNDES,

Defendant.

Case No. C19-1879RSM

ORDER DENYING MOTION TO AMEND
JUDGMENT

This matter comes before the Court on Plaintiff Aquarian Foundation's Motion for Amended Findings and Judgment brought under Rules 52(b) and 59(e), Dkt. #247.

Rule 52(b) states that the Court may amend its findings or make additional findings upon motion by a party within 28 days after the entry of judgment. Such motions are granted in order to correct manifest errors of law or fact or to address newly discovered evidence or controlling case law. Such a motion "may accompany a motion for a new trial under Rule 59." Fed. R. Civ. P. 52(b). A district court has considerable discretion when considering a motion to alter or amend a judgment under Rule 59(e). *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). A motion for relief from judgment under Rule 59(e) should be granted when the Court: "(1) is presented with newly discovered evidence; (2) committed clear error or the initial decision was manifestly unjust; or (3) if there is an intervening change in the

1 controlling law.” *In re Syncor ERISA Litigation*, 516 F.3d 1095, 1100 (9th Cir. 2008) (citation
2 omitted). Vacating a prior judgment under Rule 59(e) is an “extraordinary remedy, to be used
3 sparingly in the interests of finality and conservation of judicial resources.” *Carroll v.*
4 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). “A Rule 59(e) motion may not be used to raise
5 arguments . . . for the first time when they could reasonably have been raised earlier in the
6 litigation.” *Id.*

8 Plaintiff does not present newly discovered evidence or an intervening change in the
9 controlling law. The Court has reviewed Aquarian Foundation’s points, addressed individually
10 below, and finds no manifest errors of law or fact in its Findings of Fact and Conclusions of
11 law.

13 In its Findings, the Court states that a key signature on a document “appears
14 suspiciously similar to other Rhinehart signatures,” that worthwhile expert testimony was
15 required to analyze this issue but did not exist in this case, that “the signature is *close* to
16 appearing to be a photocopy of other Rhinehart signatures,” and that in any event expert
17 witness “Ms. McFarland has stated in her report that it is an authentic Rhinehart signature, even
18 if her live testimony was ultimately of no value.” Dkt. #241 at ¶ 5 (emphasis in original). The
19 actual quote from her report is that the signature “appears to be a genuine signature of Mr.
20 Rhinehart...” Dkt. #247 at 2–3 (citing Dkt. #166 at ¶ 7). Plaintiff “respectfully requests that
21 this Court remove the following from paragraph 5 of the Findings: ‘Ms. McFarland has stated
22 in her report that it is an authentic Rhinehart signature.’” *Id.* at 3. Plaintiff does not present
23 any basis to question the Court’s conclusion that Ms. McFarland’s testimony was ultimately of
24 no value. The Court does not believe the parties or anyone else for that matter is confused by
25 the Court’s phrasing. Given the above, the Court’s findings at paragraph 5 are factually
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1 accurate and do not constitute manifest error. Plaintiff has failed to demonstrate that relief
2 under Rules 52(b) or 59(e) are warranted.

3 Plaintiff next argues Mr. Lowndes infringed works at issue created after June 1985,
4 citing to Defense Exhibit A50. The admissibility of this exhibit, a table summarizing the
5 Copyrighted Works, was stipulated to by the parties. However, no testimony or evidence was
6 presented at trial actually demonstrating that any of the works at issue were created after June
7 1985. It was not enough for Plaintiff to simply hand the Court a copy of exhibits and not
8 mention them. A stipulation to admissibility does not constitute a stipulation as to the merits of
9 the evidence. Plaintiff failed and continues to fail to demonstrate infringement of alleged
10 proprietary works that were not copyrighted, or that injunctive relief for such is justified.
11 Accordingly, the Court did not error by finding no infringement. There is no disconnect with
12 the Court's prior Order on summary judgment.
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15 Plaintiff raises new arguments and submits new deposition quotes related to Mr.
16 Lowndes' breach of the alleged license for failure to pass along donations. This could have
17 reasonably been raised at trial. In any event, nothing contained therein demonstrates manifest
18 error in the finding that Aquarian Foundation failed to demonstrate breach of the license at trial.
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20 Finally, Plaintiff contends the Court erred by finding it did not have the authority to
21 terminate the alleged license, citing to arguments raised in its trial brief. The Court found that
22 Plaintiff "presented no credible evidence or argument that it had the authority to terminate the
23 license as an executor, administrator, or personal representative of the estate over a decade after
24 the estate closed" and that it failed to provide Mr. Lowndes with sufficient notice. Dkt. #241 at
25 ¶ 7. Plaintiff glosses over the fact that it was not a signatory to the license and has failed to
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1 demonstrate that it had the authority to terminate this license as an executor, administrator, or
2 personal representative of the Rhinehart estate.

3 Plaintiff presents no other valid basis for relief under Rules 52(b) or 59(e).

4 Having considered the briefing from the parties and the remainder of the record, the
5 Court hereby finds and ORDERS that Plaintiff Aquarian Foundation's Motion for Amended
6 Findings and Judgment brought under Rules 52(b) and 59(e), Dkt. #247, is DENIED. The
7 Court continues to find that attorney fees are not warranted in this case.
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10 DATED this 9th day of August, 2022.
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15 RICARDO S. MARTINEZ
16 CHIEF UNITED STATES DISTRICT JUDGE
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